United Nations S/2003/676

Security Council

Distr.: General
27 June 2003

Original: English

Letter dated 25 June 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 April 2003 (S/2003/420).

The Counter-Terrorism Committee has received the attached supplementary report from the Kingdom of Tonga, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-41383 (E) 030703

Annex

Letter dated 20 June 2003 from the Permanent Representative of Tonga to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to your letter dated 9 April 2003 (S/2003/420), I have the honour to attach the supplementary report of the Kingdom of Tonga, submitted pursuant to paragraph 6 of resolution 1373 (2001), on the steps taken to implement that resolution (see enclosure).

The Kingdom of Tonga stands ready to submit any further information requested by the Counter-Terrorism Committee on the Kingdom's implementation of resolution 1373 (2001).

(*Signed*) S. T. T. **Tupou**
Ambassador Extraordinary and Plenipotentiary

Enclosure

Supplementary report of the Kingdom of Tonga to the Counter-Terrorism Committee, pursuant to paragraph 6 of resolution 1373 (2001)*

Sub-paragraph 1(a)

The CTC would be grateful if Tonga could provide copies of the relevant provisions of the Criminal Offences (Amendment) Bill 2002 that deal with the requirements of the resolution.

1. A copy of this Bill is attached as an annex to this report.

Sub-paragraph 1(b)

In view of the fact as stated in the report that the Privy Council has approved Tonga becoming a party to the International Convention for the Suppression of the Financing of Terrorism, the CTC would be grateful to know how Tonga proposes to implement the Convention:

2. Overall the domestic legislation in Tonga has incorporated most of the important provisions pointed out in the Suppression of the Financing of Terrorism, however the Government's Committee on Money Laundering and Financing of Terrorism Activities is currently working on proposed new legislation and amendments to bring our legislative framework into line with international best practice.

The CTC would like to draw the attention of Tonga to sub paragraph specifically criminalizing the wilful provision or collection of funds, financial assets or economic resources by its nationals and or entities in its territory, by any means, directly or indirectly, with the intention that they should be used in order to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds etc are actually used, to carry out a terrorist offence (see article 2, paragraph 3 of the International Convention for the Suppression of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- ***The only terrorist act takes place or intended to take place or intended to take place outside the country;***
- ***No related related terrorist act occurs or is attempted;***
- ***The funds are of legal origin.***

The Criminal Offences (Amendment) Act 2002 seems to refer to only related offences and not financing of terrorism per se. The CTC would be grateful to know what steps Tonga intends taking in this regard.

3. Given it's size and resource base, the concerns with regards to financing of terrorism are covered under the provisions of the Criminal Offences Act (Cap. 18) and other supporting legislation to deal with the financing of terrorism. Further the Committee on Money Laundering and Financing of Terrorism Activities is also looking at other legislative amendments and new legislation to further assist with the full implementation of this paragraph.

* The annexes are on file with the Secretariat and are available for consultation.

Sub-paragraph 1(c)

This sub paragraph requires inter alia that state freeze without delay funds of persons both resident and non resident individuals and entities who commit or attempt to commit, participate or facilitate the commission of terrorist acts. It should be noted that for this purpose funds and other resources need not be the proceeds of crime and could be of legal origin and yet used for terrorism either within or outside Tonga. As stated in paragraph 24 of the report the current provisions of the Money Laundering and Proceeds of Crime Act 2000 seem to cover only those resources that are being imported into or exported from Tonga and is of restricted scope. The CTC would be obliged to know how Tonga proposes to implement the requirement of this sub-paragraph fully.

4. There is a general power of the Supreme Court to freeze and confiscate any funds related to crime or used in any force regardless of the sources. Work is also being undertaken to review the provisions of the Money Laundering and Proceeds of Crime Act 2000 with a view to proposing amendments to ensure full compliance with this paragraph.

Sub-paragraph 1(d)

Effective implementation Paragraph 1 of the Resolution and of the Convention for the Suppression of the Financing of Terrorism would require the obligation to report suspicious transactions to be extended to other professions engaged in financial transactions besides financial institutions and cash dealers as required at present under the Money Laundering and Proceeds of Crime Act 2000. The CTC would be content to know the steps proposed to be taken by Tonga in this regards.

5. The Committee on Money Laundering and Financing of Terrorism Activities is addressing this issue.

In addition to what is stated above there is also a need to register the religious, cultural, educational and other non governmental institutions and audit the collection and use of funds and other resources by them to ensure that their resources are not diverted to uses other than intended purposes in particular to terrorist purposes. Could Tonga please indicated what mechanism it has to achieve this objective or in the absence of which hat Tonga proposes putting in place.

6. Religious, cultural, educational and other non-governmental institutions are required to be registered for tax purposes, and are registered either as a Charitable/Non Profit Organisation under the Charitable Trusts Act 1993 or a business/commercial enterprise under the Companies Act 1995. They are required to file tax returns which includes audited accounts, and which can form the basis for an assessment as to whether resources are diverted to uses other than intended purposes and in particular terrorist purposes. In addition the Ministry of Police also undertakes surveillance of various activities undertaken in the country.

Sub-paragraph 2 (a)

The CTC notes that Tonga in its report does not clearly state that recruitment to terrorist groups either inside or outside Tonga, is prohibited or criminalized by law. As this is a requirement of this sub paragraph could Tonga please explain how the requirement has been met or in its absence how Tonga proposes to meet the requirement.

7. Part II of the Criminal Offences Act (Cap. 18) deals with these various issues including, inter alia, abetment, harbouring criminals and conspiracy. Section 8 of the Act reads as follows:

"Every person who directly or indirectly commands, incites, encourages or procures the commission of an offence by any other person and every person who knowingly does any act for the purpose of facilitating the commission of an offence by any other person is an abettor and shall (unless otherwise expressly specified by any enactment)

(a) where the offence is actually committed in pursuance or during the continuance of such abetment be liable to the same punishment as if he himself had actually committed that offence; and

(b) where the offence is not actually committed shall be liable where the offence abetted was murder to imprisonment for life or any less period and in the case of abetment of any other offence to imprisonment for a period not exceeding one half of the longest period to which a person committing that offence might be sentenced or to a fine not exceeding one half of the maximum fine which a person committing that offence might be sentenced to pay."

8. Section 12 of the Act reads as follows:

"Every person who counsels, incites or procures another to commit an offence is a party to every offence which that other commits in consequence of such counselling, inciting or procuring and which the person counselling, inciting or procuring knew or ought to have known would be likely to be committed in consequence of such counselling, inciting or procuring."

9. Section 13 of the Act reads as follows:

"Every person who knowing or having reason to believe that any person has

(a) committed an offence; or
(b) been charged by an prosecuting authority with any offence; or
(c) been issued with a summons by any court in respect of any offence; or
(d) been remanded for or is awaiting trial in any court in respect of any offence; or
(e) been convicted of any offence;

does without lawful authority or reasonable excuse any act with intent to impede his apprehension, prosecution or the execution of the sentence is guilty of an offence and is liable on conviction to indictment to imprisonment for any period not exceeding 3 years."

10. Section 15 of the Act reads as follows:

"(1). If 2 or more persons agree to act together with a common purpose in order to commit or abet an offence whether with or without any previous concert or deliberation each of them is guilty of conspiracy to commit or abet that offence as the case may be.

(2) If 2 or more persons are guilty of conspiracy to commit or abet any offence each of them shall in case the offence is committed be liable to be punished as if he had actually committed that offence or shall in case the offence is not committed be punished as if he had abetted that offence."

Sub-paragraph 2(b)

It is stated in the report that there are bilateral and multilateral relationships for cooperation with other countries. The CTC would be grateful if Tonga could provide a list of countries with which it has

bilateral and multilateral relationships and a brief description of the areas of cooperation dealt with by the agreements with the relevant countries.

11. Tonga has established a working relationship with many of the countries it has established diplomatic ties with including New Zealand, Australia, United States, United Kingdom. At the regional level there is cooperation and participation in specialist regional intergovernmental bodies such as Oceania Customs Organisation (OCO), Pacific Islands Law Officers Meeting (PILOM), the Pacific Immigration Directors Conference (PIDC) and the South Pacific Chiefs of Police (SPCP).

Please explain how early warning of any anticipated terrorist activity is provided to other member countries.

12. There are several methods whereby early warning of any anticipated terrorist activity can be provided to other member countries: firstly through the contacts with the Ministry of Police and Interpol, or through diplomatic channels.

Sub-paragraph 2(c)

Sub-paragraph 2 (d)

Sub-paragraph 2 (e)

What is the competence of courts of Tonga to deal with criminal acts of each of the following kinds:

- ***An act committed outside Tonga by a citizen of Tonga, or by a person habitually resident in Tonga (whether that person is currently present in Tonga or not);***
- ***An act committed outside Tonga by a foreign national who is currently in Tonga?***

13. In both cases, the jurisdiction of the Courts in Criminal matters is limited to Tonga's boundaries. However both cases can be dealt with by extradition and upon request from a foreign country.

Sub-paragraph 2 (f)

Please give an outline of the legal provisions and procedures in regard to the provisions of assistance in criminal investigations and judicial proceedings as contained in Tonga's mutual assistance legislation, referred to in paragraph 53 of the report.

14. Part II of that Act details the legal provisions and procedures in regard to the provisions of assistance in criminal investigations and judicial proceedings. Section 4 of the Act on the authority to make and act on mutual assistance requests reads as follows:

> "(1) The Attorney General may make requests on behalf of Tonga to a foreign State for mutual assistance in any investigation commenced or proceeding instituted in Tonga, relating to any serious offence.
>
> (2) The Attorney General may, in respect of any request from a foreign State for mutual assistance in any investigation commenced or proceeding instituted in that State relating to a serious offence:
>
> (a) grant the request, in whole or in part, on such terms and conditions as he thinks fit;

(b) refuse the request, in whole or in part, on the grounds that to grant the request would be likely to prejudice the sovereignty, security of Tonga or would otherwise be against the public interest; or

(c) after consulting with the appropriate authority of the foreign State, postpone the request, in whole or in part of the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceedings in Tonga.

(3) Requests on behalf of Tonga to foreign States for assistance shall be made only by or with the authority of the Attorney General."

15. Section 6 on mutual legal assistance requests by Tonga reads as follows:

"The requests which the Attorney General is authorised to make under section 4 are that the foreign State:

(a) have evidence taken, or documents or other articles produced in evidence in the foreign state;

(b) obtain and execute search warrants or other lawful instruments authorising a search for things believed to be located in that foreign State, which may be relevant to investigations or proceedings in Tonga;

(c) seize anything found during a search under paragraph (b);

(d) locate or restrain any property believe to be the proceeds of crime located in the foreign state;

(e) confiscate any property believed to be located in the foreign State, which is the subject of a confiscation order made under the Money Laundering and Proceeds of C ime Act 2000;

(f) transmit to Tonga any such confiscated property or any proceeds realised therefrom, or any such evidence, documents, articles or things;

(g) transfer of custody to Tonga a person detained in the foreign State who consents to assist Tonga in the relevant investigation or proceedings;

(h) provide any other form of assistance in any investigation commenced or proceeding instituted in Tonga, that involves or is likely to involve the exercise of a coercive power over a person or property believed to be in the forc ign State; and

(i) permit the presence of nominated persons during the execution of any request made under this Act."

16. Section 7 on the contents of requests for assistance reads as follows:

"(1) A request for mutual assistance shall:

(a) give the name of the authority conducting the investigation or proceeding to which the request relates;

(b) give the description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(c) give a description of the purpose of the request and of the nature of the assistance being sought;

(d) in the case of a request to restrain or confiscate assets believed on reasonable grounds to be located in the requested State, give details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraining or confiscation order;

(e) give details of any procedure that the requesting State wishes to be followed by the requested State in giving effect to the request, particularly in the case of a request to take evidence;

(f) include a statement setting out any wishes of the requesting State concerning any confidentiality relating to the request and the reasons for those wishes;
(g) give details for the period within which the requesting State wishes the request to be complied with;
(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested State;
(i) include an agreement on the question of the payment of the damages or costs of fulfilling the request; and
(j) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be considered but shall not be granted by the Attorney General until the request complies with subsection (1)."

17. Section 8 on foreign requests for an evidence gathering order or a search warrant reads as follows:

"(1) Notwithstanding anything contained in any other law for the time being in force, where the Attorney General grants a request by a foreign State to obtain evidence in Tonga, an authorised officer may apply to the Supreme Court for:

(a) a search warrant; or
(b) an evidence gathering order.

(2) The Supreme Court to which an application is made under subsection (1) shall issue an evidence gathering order or a search warrant under this subsection, where it is satisfied that there are reasonable grounds to believe that:

(a) a serious offence has been or may have been committed against the law of the foreign State; and
(b) evidence relating to that offence may :

(i) be found in any place in Tonga; or
(ii) be able to be given by a person believed to be in Tonga;

Provided that, in the case of an application for a search warrant, it would not in all the circumstances, be more appropriate to grant an evidence gathering order.

(3) For the purposes of the subsection (2) (a), a statement contained in the foreign request to the effect that a serious offence has been or may have been committed against the law of the foreign State is prima facie evidence of the fact without proof of the signature or official character of the person appearing to have signed the statement.

(4) An evidence gathering order:

(a) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, and in particular, may require any person named in the order to:

(i) make a record from data or make a copy of a record;
(ii) attend before a Judge of the Supreme Court to give evidence on oath or otherwise until excused;
(iii) produce to the Supreme Court or to any person designated by the Court, any thing, including any document, or copy of a document; or

(iv) may include such terms and conditions as the Supreme Court considers desirable, including those relating to the interests of the person named therein or of third parties.

(5) A person named in an evidence gathering order may refuse to answer a question or to produce a document or thing where the refusal is authorised by:

(a) a law of Tonga;
(b) a privilege recognised by a law in force in the foreign State that made the request, and
(c) a law currently in force in the foreign State that would render the answering of that question or the production of that document or thing by that person in its own jurisdiction an offence.

(6) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (5) (b) or (c), the Supreme Court shall adjourn the proceedings and report the matter to the Attorney General who shall notify the foreign State and request the foreign State to provide a written statement on whether the person's refusal was well founded under the law of the foreign state;

(7) Any written statement received by the Attorney General from the foreign State in response to a request under subsection (6) is admissible in the evidence gathering proceedings, and for the purposes of this section is conclusive of whether the person's refusal is well founded under the foreign law.

(8) A search warrant shall be in the usual form in which a search warrant is issued in Tonga, varied to the extent necessary to suit the case.

(9) The Attorney General shall not order any document or thing seized to be sent to a foreign State until he is satisfied that the foreign State has agreed to comply with any terms or conditions."

18. Section 9 on foreign requests for consensual transfer of detained persons reads as follows:

"(1) Where the Attorney General approves a request of a foreign State to have a person, who is detained in custody in Tonga by virtue of a sentence or order of a court, transferred to a foreign State to give evidence or assist in an investigation or proceeding in that State relating to a serious offence, an authorised officer may apply to the Supreme Court for a transfer order.

(2) The Supreme Court may make a transfer order under this subsection where it is satisfied, having considered any documents filed or information given in support of the application, and having heard the detained person, that the detained person consents to the transfer.

(3) A transfer order made under subsection (2):

(a) shall set out the name of the detained person and his current place of confinement;
(b) shall order the person who has custody of the detained person to deliver him into the custody of a person who is designated in the order or who is a member of the class of persons so designated;
(c) shall order the person receiving him into custody to take him to the foreign State and, on return of the detained person to Tonga, to return the detained person to a place of confinement in Tonga specified in the order;
(d) shall state the reasons for the transfer; and

(e) shall fix the time at or before the expiration of which the detained person must be returned, unless varied by the Attorney General.

(4) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as the person remains in custody."

Sub-paragraph 2 (g)

The CTC would be grateful for an outline of the changes that the new Immigration legislation proposes to introduce and how it would help Tonga in the better implementation of the Resolution

19. There are several areas which the current Immigration legislation does not specifically refer to and which will be addressed in the new Immigration legislation including: the creating of the offence and penalties for people smuggling, people trafficking. In addition there is a need to strengthen the provisions for removing people from Tonga.

Sub-paragraph 3(a) and 3 (b)

The CTC would be grateful to have a brief description of the arrangements that Tonga has at the bilateral, regional and multilateral level for the exchange of operational information.

20. At the bilateral level, Tonga has established working relationship for the exchange of operational information on immigration, criminal activities (Police); financial institutions with countries such as the United States, Australia, New Zealand.

21. At the regional level, there are established contacts through the SPCP for criminal matters; OCO with regards to customs related matters and PIDC with regards to immigration matters.

22. At the international level, there is Interpol.

Sub-paragraph 3(c)

Sub-paragraph 3(d)

This sub paragraph requires states to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism. It is noted from paragraph 82 of the report that currently Tonga is a party to only three of the 12 international Conventions and Protocols and Approval has been granted to Tonga to become a party to the rest of the International Instruments relating to terrorism to which it is not yet a party to. The CTC would be obliged to have a progress report on Tonga becoming a party to the rest of the Conventions and protocols to which it is yet to be a party and for which it has received the approval.

23. Please refer to the table below as to Tonga's status with respect to the twelve international instruments on terrorism:

Terrorism Conventions	Date of Ratification or Accession
Convention on Offences and Certain Other Acts Committed on Board Aircraft 1963	13 February 2002
Convention for the Suppression of Unlawful Seizure of Aircraft 1970	22 February 1977

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971	22 February 1977
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973	9 December 2002
International Convention against the Taking of Hostages 1979	9 December 2002
Convention on the Physical Protection of Nuclear Material 1980	24 January 2003
Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1988	10 December 2002
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988	6 December 2002
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988	6 December 2002
Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991	10 December 2002
International Convention for the Suppression of Terrorist Bombings 1997	9 December 2002
International Convention for the Suppression of the Financing of Terrorism 1999	9 December 2002

Sub-paragraph 3(e)

Sub-paragraph 3(f)

Sub-paragraph 4

Has Tonga addressed any of the concerns expressed in paragraph 4 of the Resolution?

24. As noted in the report, there are two conventions recommended:

(a) With respect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1992, Tonga became a party to this Convention on 29 May 2003.

(b) With respect to the United Nations Convention against Transnational Organized Crime and its three Protocols, consideration of these instruments is ongoing.

(c) Specific Provisions – FATF Special Recommendations:

(i) As to the ratification and implementation of UN instruments, Tonga has become party to the International Convention for the Suppression of Financing of Terrorism 1999 on 9 December 2002;
(ii) As to criminalising of financing of terrorism and associated money laundering, please refer to the replies to sub-paragraph 1 (above);
(iii) As to freezing and confiscating terrorist assets, please refer to the replies to sub-paragraph 1 (above);
(iv) As to reporting suspicious transactions related to terrorism, there have been no reports, to date, of suspicious transactions relating to terrorism;

(v) As to international cooperation, there is legislation in place for mutual assistance with regards to assistance at international level;

(vi) As to alternative remittances, work is currently being undertaken by the Committee on Money Laundering and Financing of Terrorism Activities on this specific provision;

(vii) As to wire transfers, measures are being undertaken and reviewed to ensure that financial institutions, including money remitters conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete original information (name, address and account number); and

(viii) As to non-profit organisations, they are required to register under the Charitable Trusts Act 1993.

Other Matters

Could Tonga please provide full organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen to be contributing to compliance with the Resolution.

25. This will be provided in due course.